IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.830 OF 2005

In the matter of Sections 391 to 394 of the Companies Act, 1956 ;

And

In the matter of Scheme of Amalgamation of Birla Global Finance Ltd. with Aditya Birla Nuvo Ltd. (formerly Indian Rayon And Industries Ltd.) and their respective shareholders and creditors.

Birla Global Finance Ltd. ..Petitioner

Mr.Virag Tulzapurkar i/b.M/s.Amarchand & Mangaldas 7 Suresh A. Shroff & Co. for the Petitioner.

Mr.C.J.Joy with Mr.R.C.Master & Mr.M.M.Goswami i/b.Dr.T.C. Kaushik for Regional Director, Department of Company Affairs Maharashtra, Mumbai.

Mr.S.C.Gupta, Official Liquidator present.

CORAM : S.J. VAZIFDAR, J.
DATED : 27TH JANUARY, 2006

P.C. :

This is the transferor company's petition in respect of a scheme of amalgamation with the transferee company viz. Aditya Birla Nuvo Ltd. The registered office of the transferee company is in Ahmedabad. The petition by the transferee company has therefore been

filed in the Gujarat High Court.

2. Last week when the matter reached hearing, the intervenor had appeared in person and requested time of one week. The application was opposed. The adjournment was however granted. Today, he appears through an Advocate. A further request has been made today for adjournment. The same is rejected.

3. The scheme contemplates the usual orders of amalgamation. One of the consequences of the scheme is for issuance of shares to the shareholders of the transferor company. The relevant provisions read as under :

> **"PARTIV - ISSUANCE OF SHARES**
>
> 14. Upon the coming into effect of the Scheme, in consideration of the transfer of and vesting of the Undertaking and the Liabilities of the Amalgamating Company to the Amalgamated Company in terms of Part III of this Scheme, the amalgamated Company shall without any further application, act or deed, issue and allot to the equity shareholders of the Amalgamating Company whose names are recorded in the Register of Members and the records of the depositary as members of the Amalgamating

> Company, on a date (the "**Record Date**") to be fixed in that behalf by the Board of Directors or a committee thereof of the Amalgamated Company in the ratio of 1 (one) equity share in the Amalgamated Company of of Rs.10/- credited as fully paid-up for every 3 (three) equity shares of Rs.10/- each held by such member in the Amalgamating Company (the "**Share Exchange Ratio**")."

4. There is no dispute even on behalf of the intervenor that the entire procedure including the holding of the meetings was carried out in accordance with the law. The result of the meeting of the equity shareholders was ascertained by voting on poll. The papers of 3 equity shareholders, representing 653 equity shareholders were declared invalid. 76 equity shareholders holding 1,93,00,291 equity shares, representing 96.20% of number of equity shareholders and 99.999% of the shareholding present and voted in favour of the scheme. Only 3 equity shareholders, holding 22 equity shares, representing 3.80% of number of equity shareholders and 0.001% of the shareholding present and voting, voted against the scheme. The scheme was approved by the overwhelming majority.

5. Out of the 22 equity shares in respect of which

votes were cast against the scheme, the intervenor holds 19 equity shares. Even in this regard, it is pertinent to note that till the date of the public announcement of the scheme, the Petitioner held only one equity share. After the scheme of amalgamation, he acquired a further 18 shares. This is how the intervenor held 19 out of the 22 equity shares in respect whereof votes were cast against the scheme. Further, the 3.8% of number of equity shareholders who voted against the scheme, is arrived at the reason of the intervenor having acquired 19 shares alongwith different joint holders, as a result whereof, he was allotted 7 different folio numbers.

6. As stated above, despite the adjournment granted, no affidavit has been filed. It is also pertinent to note that the meeting was held on 24.11.2005. The intervenor was present at the meeting. The only objection is that the allotment of shares in the scheme is opposed to public policy. No reasons for the same were even sought to be furnished by the learned Advocate.

7. The Official Liquidator in his report has stated that the affairs of the transferor company have not been conducted in a manner prejudicial to the

interest of its members or to the public interest. The Regional Director in his affidavit has stated that the scheme is not prejudicial to the interest of the creditors and the shareholders.

8. There is nothing on record which suggests that the relief claimed ought not to be granted.

9. In the circumstances, the Petition is made absolute in terms of prayers (a) to (j).

10. Costs of the Regional Director and the Official Liquidator fixed at Rs.2500/- each.

11. Filing and issuance of drawn up order is dispensed with.

All parties are directed to act on an ordinary copy of this order duly authenticated by the Company Registrar.